

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3439 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJUBHAI NAGJIBHAI DABHI

Versus

POLICE COMMISSIONER

Appearance:

MR YS LAKHANI for the Petitioner.

MR UR BHATT,AGP for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 23/07/96

ORAL JUDGEMENT

Petitioner Rajubhai Nagjibhai Dabhi by way of this petition under Article 226 of the Constitution of India has challenged the legality and validity of the order of his detention dated 28-2-1996 passed under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 by the Police Commissioner, Rajkot city.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on two criminal cases registered against the detenu at Pradyumnagar Police Station . C.R.No. 574/95 is with respect to the offences punishable under sections 394, 504, 114 and 403 of the IPC and sections 37(1) and 135 of the Bombay Police Act. C.R.No. 129/96 is with respect to the offences punishable under sections 342, 325, 452, 323, 506 (2), 504, 114 and 403 of the Indian Penal Code. The first case is pending at the trial stage while the second case is at the investigation stage. Over and above the aforesaid two criminal cases, the detaining authority has also relied upon the statements of three witnesses making allegations about the anti-social and naferious activities of the detenu. In view of this, the detaining authority came to the conclusion that the detenu iss a " dangerous person " within the meaning of section 2 (c) of the said Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in the present petition.

Mr.Lakhani, learned Advocate for the petitioner, submitted that the exercise of the powers claiming privilege under section 9 (2) of the said Act by the detaining authority by withholding the names and addresses of the witnesses is not genuine inasmuch as there was no verification of the fact about the fear , if at all it was expressed by the witnesses, for the purposes of disclosing the names and other particulars to the detenu since no affidavit has been filed in this case. Mr.Bhatt, learned AGP has produced the case papers before this Court. Perusing the same, it revealed that the last offence , being C.R.No.129/96 , was registered against the detenu on 27th June, 1996. The detenu was arrested on the same day and the Investigating Officer recorded the statements of the witnesses, whose identity is not disclosed to the detenu, also on 27th June, 1996. Not only that but the concerned Investigating Officer addressed a letter to the detaining authority (a copy whereof is supplied to the detenu) wherein he has made a reference about the last case registered against the detenu. the Investigating Officer has stated therein that there is sufficient evidence against the detenu for the purpose of filing the chargesheet and that the chargesheet would be filed within short time. Having perused the file, it appears that no material was placed before the detaining authority to show that the

verification of the statements of the witnesses was made by the Investigating Officer. In view of the fact that the order of detention was passed in great haste within 24 hours of the registration of the last offence against the detenu, it is equally doubtful as to how, when and in what manner the verification of the statements of the witnesses was made. Under the circumstances, the privilege claimed under section 9 (2) of the said Act of not disclosing the identity of the witnesses to the detenu has clearly infringed the right guaranteed under Article 22 (5) of the Constitution of India of making an effective representation against the order of detention. This has resulted the continued detention of the detenu vitiated.

In the result , this petition is allowed. The order of detention dated 28-2-1996 is quashed and set aside. The detenu Rajubhai Nagjibhai Dabhi is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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